UNITED STATES PATENT AND TRADEMARK OFFICE

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09/542,139	04/04/2000	Satoru Yukie	50 P 3859.02	6059

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EXAMINER
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The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/542,139
Filing Date: April 04, 2000
Appellant(s): YUKIE ET AL.

MAILED

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GROUP 3600

John L. Rogitxz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 16, 2005 from the Office action mailed

April 29, 2005 and the "ORDER RETURNING UNDOCKETED APPEAL TO

EXAMINER" dated May 15, 2007..

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,708,961   Hylton et al.   01-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 8, 10, 12-17, 22, 24, 26, 29-35 are rejected under 35 U.S.C. 102(b)

as being anticipated by Hylton et al. (US Patent No. 5,708,961).

Hylton et al disclose all the claimed limitation, particularly, Hylton et al disclose a

wireless on premises video distribution using digital multiplexing. Hylton et al disclose:

"The illustrated network also offers pay per view services through the ATM broadcast

program channels 318. A user selects a pay per view event by operating the terminal 100a. The

terminal 100a transmits a purchase message upstream through the Loop Transport Interface 300

to the level 1 gateway 411. If the authorization data in the subscriber's profile in the level 1

gateway 411 indicates that the terminal identification is valid and the subscriber is authorized to

purchase such events, the level 1 gateway instructs the Access Subnetwork Controller 417 to

authorize reception. If decryption is required, the Access Subnetwork Controller instructs the

ACC 4000 331 to provide a decryption key to the NIM. In response to an appropriate message

from the level 1 gateway 411, the terminal 100a decodes the pay per view event in essentially the

same manner as for other premium services carried on the ATM broadcast channels 318, as

outlined above. Similar procedures are used to authorize reception of pay per view events by a

set-top terminal 100 serviced through shared receiving system 10.sub.1. ".

"The operations of each HDT 530 are controlled by data tables stored within the HDT. The video information providers (VIP's) provision various services for their subscribers by establishing appropriate mapping and profile data in the tables in the HDT's 530. The VIPs, however, do not have direct access to the data tables within the HDTs. Instead, the VIPs access the VAM 542 through a personal computer interface 544 and the X.25 data communication network 546. The VIPs 510 provide provisioning data through the operations and support system (OSS) 544 to the VAM 542, and the VAM 542 periodically downloads that data to the appropriate HDTs 530."

The content is in digitized format. Accounting data is generated, and information data are retrieved based on a profile of a subscriber for transmission to a subscriber's terminal.

As per claims 1 and 12, 24, 26 Hylton et al disclose a computerized system for transmitting video programs to subscriber terminals located at a remote terminal through a computer network path. See figure 1 of Hylton et al. The video programs are in a digitized format and are available for selection on a computer network. The system uses a wireless communication path. (See figure 1, column 26, lines 9-38, column 43, line 65 to column 44, line 9).; comprises at least one connect sever communicating with the user terminal (figure 1, element 5) the connect server receiving requests for content (such as video programs or pay-per-view events) generated from the user terminal (column 26, lines 38-44 and line 63 to column 27, line 14); the connect server accessing a database of publicly vended content to fulfill the requests (figure 1 and column 26); Customers must pay for rendered services or video programs

and an accounting or billing data is present for generating billing data. See column 40, lines 38-48 and column 37, lines 38-48.

Appellant argues that Hylton et al fail to teach or suggest the accounting data is generated using one or both of the type of user terminal and number of packets delivered to the user terminal.

In response, Hylton et al disclose providing services to customers or to customers' terminals based on their profile and/or based on selected services or programming. These functions are steps or means for generating billing or accounting data based on the type of user terminal and number of packets to the user terminal. See column 26, lines 9-39 of Hylton et al. The services provided are video programs that may be generated data packets and IP packets. See column 25, lines 39-48 of Hylton et al.

As per claims 2, 13, Hylton et al teach at least a portion of the network path is a directional wireless path. See column 38, lines 38-46 of Hylton et al.

As per claim 3 and 15, the system of Hylton et al uses wireless and employs no telephony switches therein.

As per claim 14, see column 6, line 44 to column 7, line 34 of Hylton et al.

As per claims 4-5, 16-17, Hylton et al teach the content is provided to the user terminal over the network path in packets and wherein the packets are in IP protocol format. See column 25, lines 38-48 and column 41, lines 29-48.

As per claims 8 and 29 the subscription is established at least in part by a user profile (see column 26, lines 9-38).

As per claims 10, 22, the billing data is based at least in part on at least one time period since video programming are pay-per-view and also since cable services are billed monthly by a service provider.

As per claims 30-32, the network path has a data transmission rate of at least one Mbps. See column 13, lines 8-26, column 14, lines 19-29 and column 21, lines 49-65 of Hylton et al.

As per claims 33-35, Hylton et al disclose steps or means for determining a user terminal device type, the device type dictating the content to be provided to the user terminal. See column 41, lines 12-48 of Hylton et al.

(10)   Response to Argument

Appellant argues that the claimed accounting data is generated using one or both of the type of user terminal, and a number of IP packets delivered to the user terminal and that the accounting billing system of Hylton et al does not bill based on one or both of the type of user terminal, and number of IP packets delivered to the user terminal.

In response, Hylton et al are directed to a system and method for delivering media content to a remote user terminal. Users in the system of Hylton et al use a wireless device or a

set-top terminal for selecting or requesting a desired program or content. A signal is then

transmitted to a remote server via a digital network which then accesses these contents from a

publicly vended system for supplying the desired content to the user terminal. See column 4,

line 54 to column 5, line 2; column 5, line 48 to column 6, line 4. Hylton et al further state that

"some messages received through the modem 25 from network 5 are intended for a specific set

top terminal, e.g. for text or graphic overlay display offer the video on the TV". See column 9,

lines 61-67. Hylton et al further state different programs or different contents or data packets are

transmitted to different terminals. See column 12, lines 12-38. In that passage, it is clearly

indicated that different terminals receive different contents as different contents are priced

differently. Moreover, since the users are subscribers and the users receive desired contents at

their respective addresses or locations, and each user terminal is associated with a specific user,

the accounting data is generated are based on a user terminal and/or a number of IP packets

delivered to a specific user terminal. Users are billed according to requested signals and

delivered contents. Billing users independently of the type of user terminal or the number of IP

packets delivered to a user terminal implies billing users without any kind of control. Users

would be billed for the wrong delivered contents, and users receiving desired contents would not

be billed correctly.

Appellant then argues that "nowhere does the Office action mention the limitation of

claim 1 that the connect server accesses a database of publicly vended content.

In response, Hylton et al on column 2, lines 29-34 state "a central unit at the point of

connection to the network selects a channel from those supplied by the network. The selected

network channel is retransmitted within the customer premise on an RF channel". Hylton et al also state on column 6, lines 2-4, that "The program selectors thus supply digital information for a plurality of individual selected programs to a multiplexer 15". See also column 9, lines 44-67 and column 17, lines 7-17 where it is stated that a large number of service providers offers users a wide array of video and interactive multi-media services. See column 43, line 65 to column 44, line 9 of Hylton et al.

Appellant then argues that Hylton et al do not teach a directional wireless path as recited in claim 2.

In response, the Examiner strongly disagrees. Hylton et al teach providing a wireless distribution of digital broadband information within a customer premise. See the abstract, column 2, lines 24-27, column 3, lines 11-17, column 9, lines 45-67, column 38, lines 39-47 and column 45, lines 5-27.

Appellant then argues that Hylton et al do not teach or suggest space division multiple access (SDMA) as recited in claim 14.

In response, SDMA is taught on column 6, line 44 to column 7, line 34. Hylton et al state that SDMA is a multiple spread spectrum system.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Frantzy Poinvil
Primary Examiner
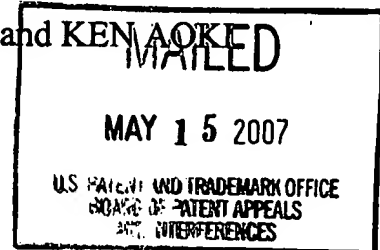**Art Unit 3692**

Conferees:

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SATORU YUKIE, GINA C. EUBANKS, and KEN AOKI

Application 09/542,139
Technology Center 3600

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on April 4, 2007. A review has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner. The matters requiring attention prior to docketing are identified below:

The Examiner issued an Examiner's Answer on January 18, 2006. The headings and content are not commensurate in scope with *the Manual of Patent Examining Procedure* (*MPEP*) § 1207.02(A)(1)-(11). The Examiner is to furnish a Supplemental Examiner's Answer in accordance with such.
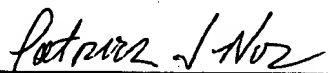
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Application 09/542,139

Accordingly, it is

ORDERED that the application is returned to the Examiner:

(1) to provide a Supplemental Examiner's Answer in accordance with *(MPEP)* § 1207.02(A)(1)-(11), and;

(2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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